



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/806,860	07/02/2001	Frederick Johannes Bruwer	P.19092/MAJR	6357

7590

09/05/2003

William A Blake  
Jones Tullar & Cooper  
PO Box 2266 Eads Station  
Arlington, DC 22202

EXAMINER

POLK, SHARON A

ART UNIT

PAPER NUMBER

2836

DATE MAILED: 09/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/806,860

Applicant(s)

BRUWER, FREDERICK  
JOHANNES

Examiner

Sharon Polk

Art Unit

2836

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10 June 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 51-65, 69 and 72-86 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 51-65, 69 and 72-86 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 10 June 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

1. The drawing objections have been withdrawn.

### ***Specification***

2. The examiner would like to thank Applicant for the submission of the abstract.

As such the objection to the specification has been withdrawn.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 51-86 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With regard to claims 51, 58, 61, 63, 72, 80 it is unclear how a microchip having at least a first input, can transmit that first input to the microchip. In other words, as claimed, and not understood, the microchips first input transmits a signal to itself. Additionally with regard to the above claims, Applicant first recites an electronic circuit, with intended use (for use in a portable system), and then recites components of the system. However, at (c), the electronic circuit is further controls . . . . Therefore, it is not clear if the system is part of the circuit, or the circuit is part of the system, and also what else the circuit controls besides the recitation of (c). The examiner also queries how the circuit recited in (c) can *control* the claimed indicators when as understood, they are controlled based upon the state power source, and load?

### ***Double Patenting***

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 51, 57, 72, and 75 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 12, 13, and 15 of U.S. Patent No. US 6,249,089. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the application and the patent claim a portable system with an exhaustible power source, consuming primarily a light element, aka, a flashlight. Additionally, both claim a microchip and a switch.

### ***Response to Arguments***

5. Applicant's arguments filed June 4, 2003 have been fully considered but they are not persuasive. It was argued that the wall fitting of Liao does not conform to the limitations of the independent claims because it excludes the possibility of being portable. However, It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the taught wall unit portable, since it has been

Art Unit: 2836

held that making an old device portable or movable without producing any new and unexpected result involves only routine skill in the art. *In re Lindberg*, 93 USPQ 23 (CCPA 1952).

It was argued that Bradley does not include any electronics, however applicants electronic circuit as claimed does not include any electronics. However, the examiner has provided another reference to teach a find in the dark indicator with electronics.

It was argued that Bertolino also does not disclose the use of electronics, no suggestion as to how it can be presented visibly on the outside of a product, and further, how it can be seen in the dark. Applicant's first argument was addressed above. With regard to the other arguments, applicant is arguing elements not recited in the claim. However, the examiner has applied a different reference to teach an electronic circuit power source level indicator.

It was argued that Bradley does not teach sequencing. The examiner aggress, and has provided a new rejection.

It was argued that the reliance on Ishinaga is questionable. However, two circuits containing electronics are now used to form the basis of combining them with Ishinaga. Further, Ishinaga provides sufficient motivation as to why one skilled in the art would further modify the previous teachings.

With regard to the remaining arguments, (claims 54, 55, 57, 60, and 62) the traverses the arguments for reasons stated above with regard to devices now being portable.

The following art rejection is given as best understood in light of the 35 USC § 112, second paragraph rejection above.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 51, 54, 57-58, 61, 62, and 80-83, are rejected under 35 U.S.C. 103(a) as being unpatentable over Liao, US 5,645,341 in view of Dalton et al., US 5,806,961, and Osterhout et al., USP 4,876,632.**

With regard to claims 51, 58, 61, and 80-83, Liao teaches an electronic circuit for use in a portable system with an exhaustible power source (28), a power switch (25), and an energy consuming load (26) being primarily a light generating element, said system comprising:

(a) a microchip (35) having at least a first input, said first input transmitting a signal to said microchip when said load has been activated or deactivated and, when in use with said power source and said load, said first input does not form a serial link between the power source and the load (fig. 5);

(b) said power switch configured to be connected to said power source and to said load, and to control by on/off switching energy flow from said power source to said load (fig. 5).

Liao teaches the claimed invention (of claims 51, 58, and 61) except for explicitly teaching a find-in-the-dark location indicator that is active when the load is not energized and the power source is not being charged, and a power source level indicator that is active when the load is not energized and the power source is not being charged as precisely claim.

Dalton et al. teaches a find-in-the-dark location indicator that is active when the load is not energized and the power source is not being charged (e.g., abstract, LED2). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Liao with the teachings of Dalton et al. for the purpose of providing a making is easier to locate the flashlight in the dark (1:45-51). With regard to the newly added limitation of the flashing light. Official notice is taken that it is well known in the indicator art to use flashing lights to gain the attention of the intended user. As such one skilled in the art at the time of the invention would have been motivated to modify Dalton et al. to include flashing LED's for the purpose of finding the light quicker.

Osterhout et al. teach a power source level indicator that is active when the load is not energized and the power source is not being charged (e.g., abstract). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify Liao with the teachings of Osterhout et al. so that power is not drained when the flashlight is not in use (1:39-41).

With regard to claim 56, adding the find-in-the-dark indicator changes its mode based upon the first input. Dalton et al. teaches this feature (e.g., abstract).

With regard to claims 58, 61 adding additional loads other than a light generating element. The plain meaning of a load is the power consumed by a machine or circuit in performing its function. Modern Dictionary of Electronics, 7<sup>th</sup> Ed., p. 431. As such the art used to reject claim 51, is also being applied to claims 58, 61, because a motor, and a radio meet the requirements of a load as claimed.

With regard to claim 65, Liao microchip also performs some functions related to the charging of said power source (col. 3, ll. 2-36).

With regard to claims 54, 57, 60, 62, and 83, Liao teaches an automatic delayed shut-off function in response to an activation signal on said first input, with said first input comprising an activating/deactivating user interface and said power switch controlled by said electronic circuit (col. 3, ll. 23-36).

Claims 52, 55, 59, and 81 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liao, in view of Dalton et al., and Osterhout et al. as applied to claims 51, 58 and 80 above, and further in view of Keller, US 4,074,252.

With regard to claims 52, 59, and 81 adding the limitation of the activation/deactivation sequence. The examiner notes that the feature that is not taught by Liao, Dalton et al., or Osterhout et al.. However, Keller the claimed sequence. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify Liao with the teachings of Keller for the purpose of providing a flasher



device which will intermittently turn on a conventional flashlight bulb mounted behind appropriate lenses of colored, attention attracting structure.

With regard to claim 55, Liao teaches an automatic delayed shut-off function in response to an activation signal on said first input, with said first input comprising an activating/deactivating user interface and said power switch controlled by said electronic circuit (col. 3, ll. 23-36).

**Claims 53, and 82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liao, in view of Dalton et al., and Osterhout et al. Bertolino as applied to claims 52, and 80 above, and further in view of Ishinaga et al., US 5,942,770.**

With regard to claims 53 and 82, adding the limitation of combining the indicators. The examiner notes that the feature that is not taught by Liao, Dalton et al., or Osterhout et al. However, Ishinaga et al. teaches or fairly suggests a two-color LED component for use in portable devices. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify Liao with the teachings of Ishinaga et al. because in recent years, as portable phones, portable transceivers, and similar appliances become more and more popular, slimness has been eagerly sought in those appliances. As a result, also with the LEDs that are widely used for displaying and illumination purposes in such appliances, suitability for use in slim appliances has been eagerly sought (col. 2, ll. 1-6). Therefore, in an effort to minimize the amount of space required for 2 LEDs, a single dual-colored LED would be obvious modification of Liao as modified by Dalton et al., and Osterhout et al.

***Allowable Subject Matter***

7. Claims 63 and 72 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

The following is a statement of reasons for the indication of allowable subject matter: The prior art does not teach or fairly suggest the controlling one of the recited functions (average power reduction, intermittent activation, or code sequencing of activation) in combination with the recited electronic circuit for use with a flashlight having a microchip. Additionally, the prior art does not teach or fairly suggest the microchip of electronic circuit for use with a flashlight having a microchip determining the selected function based on either the number of activation signals, the time duration between signals, or time duration of activation signals in combination with the other recited elements of the claim.

Claims 84-86 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims

The following is a statement of reasons for the indication of allowable subject matter: The prior art of record does not teach or fairly suggest, the micro chip configured to accept an address field from another controller in combination with the other recited elements, and further that the microchip is configured to control a reduction of the power to the load in combination with the other recited elements of the claim.

Art Unit: 2836

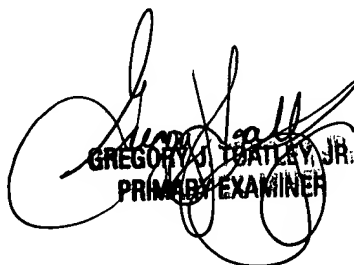
***Communication with the PTO***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon Polk whose telephone number is 703-308-6257. The examiner can normally be reached on M-F 7-3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Sircus can be reached on 703-308-3119. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9318 for regular communications and 703-872-9319 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

sp

  
GREGORY J. BARTLEY, JR.  
PRIMARY EXAMINER